



Ninety-Ninth Legislature - First Session - 2005
Introducer's Statement of Intent
LB 360

Chairperson: Patrick J. Bourne
Committee: Judiciary
Date of Hearing: January 26, 2005

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

Nebraska presently defines the crime of burglary as the act of “willfully, maliciously, and forcibly” breaking and entering any real estate or any improvement erected thereon, with the intent to commit any felony or with intent to steal property of any value.

For decades, the Nebraska courts have struggled to fully define “breaking”. After much consideration, the courts have settled on a definition of “breaking” as any act of physical force, however slight, to remove an obstruction to the entry of the premises. This has led to a series of inconsistent convictions under the law of burglary. For instance, the Nebraska Supreme Court has recognized the *opening* a window or door is “breaking”, but *walking* or *climbing* through an open door or window is not “breaking”. See *State v. Tyrrell* 234 Neb. 901 (1990); *Hayward v. State*, 97 Neb. 9 (1914); *State v. Zemunski*, 230 Neb. 613 (1988); *McGrath v. State*, 25 Neb. 780 (1889).

This problem was specifically addressed in a Nebraska Supreme Court concurring opinion in the case of *State v. Greer*, 257 Neb. 208 (1999). In that opinion several justices gave the example that under the present interpretation of “breaking”, “climbing over the newly erected fence at the Governor’s mansion with the intent to commit any felony is not burglary”, but “[o]pening an walking through the gate with the same intent is burglary.” *Id.* at 218. The concurring opinion called on the Legislature to resolve this issue.

Legislative Bill 18 amends the burglary statute and removes the element of “breaking” from the offense. The intent of the burglary statute is to protect the sanctity and security of our homes and businesses. This intent should not be hindered by formalistic and hyper-technical application of the law.

The statute is also narrowed to only define burglary for those acts whereby a person, who is not licensed or privileged to do so, enters, or remains unlawfully in, a building or occupied structure, rather than “any real estate” as currently proscribed.

Principal Introducer:

Senator Patrick Bourne